

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs July 26, 2000

**STATE OF TENNESSEE v. DAVID ANTHONY LEE**

**Direct Appeal from the Criminal Court for Hamilton County  
No. 223915-223916    Stephen M. Bevil, Judge**

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**No. E1999-02537-CCA-R3-CD  
October 6, 2000**

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The defendant, after pleading guilty to violation of the Motor Vehicle Habitual Offenders Act, appeals his six-year sentence. He argues that the trial court erred in finding that he was a “career offender.” Further, he argues that his sentence constitutes “cruel and unusual punishment” in violation of Article 1, §16 of the Tennessee Constitution and the Eighth Amendment to the United States Constitution. We affirm the trial court’s judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JOSEPH M. TIPTON and ROBERT W. WEDEMEYER, JJ., joined.

Michael A. Anderson, Chattanooga, Tennessee, for the appellant, David Anthony Lee.

Paul G. Summers, Attorney General and Reporter; Patricia C. Kussmann, Assistant Attorney General; William H. Cox III, District Attorney General; and Thomas E. Kimball, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Introduction**

The defendant, David Anthony Lee, appeals his six-year sentence after pleading guilty in Hamilton County Criminal Court to violation of Tenn. Code Ann. § 55-10-601, the Motor Vehicle Habitual Offenders Act. For this offense, the defendant was sentenced as a Range III “career offender.” On appeal, the defendant asks this Court to hold that his Range III “career offender” classification was in error and that his sentence was “cruel and unusual punishment.” After careful review, we hold that the defendant was properly classified as a “career offender” and his six-year sentence is not “cruel and unusual punishment.”

## Facts

On October 14, 1997, after several traffic offenses, the defendant was declared a motor vehicle habitual offender by the Hamilton County Criminal Court and prohibited from driving a motor vehicle. On March 12, 1998, the defendant was stopped at a roadblock conducted by the Tennessee Highway Patrol. The defendant was found to be operating a motor vehicle after having been declared a motor vehicle habitual offender. He was indicted on November 4, 1998.

The state then filed a notice to seek enhanced punishment on February 18, 1999, setting forth seven prior felony convictions. The defendant pled guilty on September 30, 1999, to violation of the Motor Vehicle Habitual Offenders Act, a class E felony. A sentencing hearing was conducted on November 15, 1999. At this hearing the state introduced certified copies of judgments reflecting seven prior felony convictions. The defendant did not introduce any evidence at the sentencing hearing. The sentencing court then classified the defendant as a “career offender” and sentenced him to six years in the Department of Correction, the sentence required by law. The defendant now appeals his sentence.

## Analysis

The defendant first argues that he was improperly classified as a Range III “career offender.” Specifically, he argues that he did not possess sufficient prior felony convictions to be a “career offender,” as several of his prior convictions should have been considered, for sentencing purposes, as one conviction under the twenty-four hour merger rule.

At sentencing, the court first determines the appropriate offender status based upon a defendant’s prior felony record. See Tenn. Code Ann. § 40-35-104. The court then determines the appropriate range to establish the minimum and maximum sentence available. See Tenn. Code Ann. §§ 40-35-104 to -108. A “multiple offender” is sentenced within Range II, a “persistent offender” within Range III, and a “career offender” receives the maximum sentence within Range III. See Tenn. Code Ann. § 40-35-106, -107, -108.

Commonly known as the “twenty-four hour merger rule,” “felonies committed as part of a single course of conduct within twenty-four (24) hours constitute one conviction” for sentencing purposes. Tenn. Code Ann. § 40-35-108 (b)(4). A defendant who has at least six prior felony convictions is classified as a “career offender” and shall receive the maximum sentence within the applicable Range III. See Tenn. Code Ann. § 40-35-108 (c). Submission of certified copies of the defendant’s prior convictions is prima facie evidence of the defendant’s prior felony record. See Tenn. Code Ann. § 40-35-202 (a).

In this case, the state sought to classify the defendant as a “career offender.” The state introduced certified copies of judgments reflecting that the defendant had been convicted of the following felony offenses:

- (1) Sale of Cocaine, Case # 169264, Hamilton County, Offense date 2-28-87;

- (2) Sale of Cocaine, Case # 169266, Hamilton County, Offense date 3-7-87;
- (3) Sale of Cocaine, Case # 169263, Hamilton County, Offense date 3-8-87;
- (4) Sale of Cocaine, Case # 169265, Hamilton County, Offense date 3-13-87;
- (5) Forgery, Case # 175627, Hamilton County, Offense date 12-4-88;
- (6) Grand Larceny, Case # 175762, Hamilton County, Offense date 1-4-89; and
- (7) Forgery (2 counts), Case # 97CR00179, Cathouse County, Georgia, Offense date, October 17, 1995.

The defendant did not object, challenge, or rebut these convictions.

The defendant asserts that the trial court erred and that several of the prior convictions should be counted as one because they constituted a single course of conduct and were adjudicated on the same day. Application of the twenty-four hour merger rule requires that the offenses be committed in the same twenty-four hour period. See Tenn. Code Ann. § 40-35-108 (b)(4). The date of adjudication or the entry of judgment is irrelevant when applying the twenty-four hour merger rule. Therefore, the trial court correctly classified the defendant as a Range III “career offender.”

The defendant also asserts that the trial court erred in not applying the twenty-four hour merger rule specifically to the felonies occurring on March 7, 1987, and March 8, 1987. As previously set forth, six prior felony convictions are all that is necessary to classify the defendant as a “career offender.” If we were to accept the defendant’s argument, it would merely reduce the total number of prior felony convictions appropriate for consideration from seven to six. Such a reduction, however, would not change the defendant’s classification as a “career offender.” Therefore, this issue grants no relief to the defendant.

Finally, the defendant argues that his sentence, six years incarceration, was “cruel and unusual punishment.” To be clear, he does not argue that the trial court erred in weighing any particular mitigating or enhancing factors. Instead, the defendant asserts that six years incarceration constitutes “cruel and unusual punishment” under Article I, § 16 of the Tennessee Constitution and Eighth Amendment to the United States Constitution as it is grossly disproportionate to the convicted offense, violation of the Motor Vehicle Habitual Offenders Act, a class E felony. In fact, once the trial court classified the defendant as a “career offender,” weighing enhancing and mitigating factors became irrelevant because the trial court was required to sentence the defendant to the maximum sentence within Range III for the convicted offense. See Tenn. Code Ann. § 40-35-108 (c).

The Tennessee Supreme Court set out the factors to consider in whether a particular sentence is cruel and unusual in State v. Black, 815 S.W.2d 166, 189 (Tenn. 1991). A reviewing court must address (1) whether the punishment imposed comports with contemporary decency standards; (2) whether the punishment is grossly disproportionate to the convicted offense; and (3) whether the punishment goes beyond what is necessary to meet any penological objective. Black, 815 S.W.2d at 189-90.

In fact, the Tennessee Supreme Court previously addressed whether the punishment provided by the Tennessee Motor Vehicle Habitual Offenders Act (Act) constitutes cruel and unusual

punishment in State v. Orr, 694 S.W.2d 297, 298-99 (Tenn. 1985). In Orr, the Court held that a sentence of three years imprisonment was not cruel and unusual given the defendant's lengthy prior record of serious driving infractions. Orr, 694 S.W.2d at 299. The Orr court noted the Legislature's policy reasons for enacting the possible range of punishment for violation of the Act, which at the time was one to ten years imprisonment. Id. We recognize that our case imposes a sentence of six years, which is greater than the three in Orr; however, we believe that the Supreme Court in Orr would have been willing to uphold even a ten-year sentence, the maximum sentence at that time.

We also note, contrary to the defendant's argument, that punishment for violation of this Act is not merely punishment for driving on a revoked license. A violation of this Act is a violation of a court order prohibiting an individual from driving as a result of repeated driving infractions. Furthermore, the defendant not only violated a court order, but the defendant feloniously disregarded the law on seven prior occasions, resulting in a "career offender" classification. Therefore, after careful review, we disagree with the defendant and hold that his sentence was lawfully imposed and was not grossly disproportionate to violation of the Act, clearly comporting with contemporary decency standards and Article I, § 16 of the Tennessee Constitution and the Eighth Amendment to the United States Constitution.

### **Conclusion**

For these reasons, we affirm the judgement and sentence from the trial court in all respects.

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JOHN EVERETT WILLIAMS, JUDGE